

Baker & Hostetler LLP

45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan

*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

BSI AG, individually and as successor in interest to
BANCO DEL GOTTARDO,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 12-01209 (SMB)

**TRUSTEE'S STATEMENT OF
ISSUES TO BE PRESENTED
AND DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON
APPEAL**

Irving H. Picard (the “Trustee”), as trustee of the substantively consolidated estate of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. §§ 78aaa, *et seq.*, and Bernard L. Madoff, individually, hereby submits, pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure and Rule 8009-1 of the Local Bankruptcy Rules for the Southern District of New York, this statement of issues to be presented and designation of items to be included in the record on appeal with respect to the Trustee’s appeal in the above captioned adversary proceeding (the “Adversary Proceeding”) of the Stipulated Final Order Granting Motion to Dismiss Complaint (the “Final Judgment,” a copy of which is annexed hereto as Exhibit 1)¹ before the United States Court of Appeals for the Second Circuit.²

I. Statement of Issues to be Presented

1. Whether and in what circumstances SIPA and the Bankruptcy Code permit the recovery of property fraudulently transferred by the debtor when it has been subsequently transferred in transactions with allegedly extraterritorial components.

2. Whether the comity of nations independently bars recovery of such property as otherwise authorized by SIPA and the Bankruptcy Code.

II. Designation of Items to be Included in the Record on Appeal

The Trustee designates for inclusion in the record on appeal the items listed in Appendix A, the pertinent docket entries filed in this Adversary Proceeding, including parallel citations to

¹ Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers of the Bankruptcy Court (Bernstein, J.), dated November 22, 2016 (attached as Exhibit A to the Final Judgment and annexed hereto as Exhibit 1). *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re BLMIS)*, Adv. Pro. No. 08-01789 (SMB) (Bankr. S.D.N.Y. Nov. 22, 2016), ECF No. 14495.

² The Trustee and the defendant in this Adversary Proceeding have agreed pursuant to 28 U.S.C. § 158(d)(2)(A)(iii) to certify this appeal to the United States Court of Appeals for the Second Circuit. If, however, the United States Court of Appeals for the Second Circuit does not authorize a direct appeal, the Trustee appeals the Final Judgment, in the alternative, to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 158(a)(1).

the main docket, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re BLMIS)*, Adv. Pro. No. 08-01789 (SMB) (Bankr. S.D.N.Y.).

The Trustee designates for inclusion in the record on appeal the items listed in Appendix B, the pertinent docket entries filed in *Picard v. Fairfield Inv. Fund Ltd.*, Adv. Pro. No. 09-01239 (SMB) (Bankr. S.D.N.Y.), which are incorporated by reference in the various pleadings filed in this Adversary Proceeding or are otherwise pertinent to the appeal of the Final Judgment.

The Trustee designates for inclusion in the record on appeal the items listed in Appendix C, the pertinent docket entries filed in the United States District Court for the Southern District of New York, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.)*, No. 12-mc-00115 (JSR) (S.D.N.Y.), in connection with and following withdrawal of the automatic bankruptcy reference of the adversary proceedings pursuant to 28 U.S.C. § 157 (the “District Court Designations”). Copies of the District Court Designations listed on Appendix C are annexed hereto as Exhibits 2–19.

Each designated item on Appendices A through C shall also include any and all exhibits and documents annexed to or referenced within such items.

Dated: March 28, 2017
New York, New York

By: /s/ Stacy A. Dasaro
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Stacy A. Dasaro
Email: sdasaro@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff Investment
Securities LLC and the Estate of Bernard L.
Madoff*